

REMARKS/ARGUMENTS

Claims 1-25 are pending in the present application, and this Amendment and Response is the Applicant's reply to the USPTO Office Action having a mailing date of September 28, 2005. In the Office Action, the Examiner rejected Claims 1-4, 8-9, 14-16, and 19-22. The Examiner also objected to Claims 5-7, 10-13, 17 and 18. In addition, the Examiner allowed Claims 23-25. The Applicant appreciates the Examiner's recognition of the allowed claims and the allowable subject matter of the objected claims.

In Paragraphs 1 and 2 of the Official Action, the Examiner objected to the specification on the basis that the abstract of the disclosure has not been filed on a separate sheet. However, the Applicant respectfully notes that filing of a national phase application often requires adapting the international application for filing in the United States. Indeed, MPEP 1893.03(e) states:

When the international application is published as the pamphlet, the abstract is reproduced on the cover page of the publication, even though it appears on a separate sheet of the international application in accordance with PCT rule 11.4(a). Thus the requirement of 37 C.F.R. 1.52(b) that the abstract "commence on a separate sheet" does not apply to the copy of the application (pamphlet) communicated to the designated Offices by the International Bureau under PCT Article 20. Accordingly, it is improper for the examiner of the U.S. national stage application to require the applicant to provide an abstract commencing on a separate sheet if the abstract does not appear on a separate sheet in the pamphlet.

Notwithstanding this point, in order to address the Examiner's objection, the Applicant has amended the specification by deleting the existing abstract and adding an Abstract (of identical content) to a separate page after the claims at the back of the text portion of the application. The Applicant believes the Abstract complies with U.S. requirements for the abstract portion of the application, including that the Abstract be less than 150 words in length. Accordingly, in view of the above, the Applicant respectfully requests withdrawal of the Examiner's objection.

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The Examiner rejected Claims 1 to 4, 8, 9, 14 to 16, and 19 to 21 under 35 U.S.C. §102(e) as being anticipated by WO 03/035992 to Pilja (hereafter “Pilja”). In particular, the Examiner contends that Pilja discloses an adjustable clamp including an elongated connection member (2, 5), first and second gears (8, 12), a first clamping member (4), and a retaining member (7).

It is first respectfully noted to the Examiner’s attention that Pilja is an inappropriate 35 U.S.C. §102(e) reference for the current application. Specifically, the international filing date for Pilja is October 24, 2002. Although the priority date of Pilja is October 24, 2001, this date is not available as the 35 U.S.C. §102(e) date because no benefit of the filing date of the foreign application is given under 35 U.S.C. §102(e) for prior art purposes. In re Hilmer, 149 USPQ 480 (CCPA 1966); also see MPEP §706.02(f)(1). Since the present application is the national phase application of International Application No. PCT/AU2003/001007 that properly claimed the benefit of Australian Patent Application No. 2002950670 filed on August 9, 2002, the priority date of the current application predates the Pilja 35 U.S.C. §102(e) reference date of October 24, 2002 that corresponds to the international filing date for Pilja. Accordingly, for this reason alone, the Examiner should withdraw the 35 U.S.C. §102(e) rejection of Claims 1 to 4, 8, 9, 14 to 16, and 19 to 21. In addition, for the foregoing reasons, the Examiner should also withdraw the 35 U.S.C. 103(a) rejection of Claim 22 as well.

Notwithstanding the point above regarding the inappropriateness of Pilja as a 35 U.S.C. §102(e) reference, the Applicant also respectfully denies that the present invention, as claimed in any one of the rejected claims, is anticipated by Pilja. The prior art clamp disclosed in Pilja requires the use of a separate tool comprising a shaft (10) having a pinion gear (12) located at a lower end (11) thereof. In order to operate the prior art clamp (1), the tool must first be located within the locating aperture (14) provided in the engaging member (3) of the clamp (1).

By contrast, the claims presently rejected under 35 U.S.C. §102(e) recite “a clamping assembly”. The word “assembly” as used within the present specification and claims has its ordinary meaning, according to which the inventive clamp is assembled to form a complete unit, with all components that are required to achieve the advantages of the invention being provided

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within the clamp assembly, such that there is no requirement for a specially adapted tool to be provided in order to operate the clamp. Pilja does not disclose an adjustable clamp assembly comprising all of the essential features of the present invention as defined in Claim 1. Rather, Pilja discloses two separate components, one of which is the specialized tool previously discussed, with the other component being an adjustable clamping arrangement including an elongated connection member (2) which is associated with a single gear member (9) having an axis of rotation substantially parallel to a longitudinal axis of the connection member (2). The prior art clamping component further includes first and second engaging members (3, 4).

Pilja, therefore, does not disclose an adjustable clamp assembly which comprises a gear assembly having a rotatable first gear member with an axis of rotation substantially perpendicular to the longitudinal axis of the connection member, and a second gear member co-operatively engaged with the first gear member. More particularly, Pilja neither discloses nor suggests any means or method whereby the second gear member (12), included in the operating tool, may be incorporated within a common gear assembly with the first gear member (9).

As will be appreciated, it is not a trivial matter to devise a clamp comprising a gear assembly in which both the first and second rotatable gear members are held securely in co-operative engagement with one another, such that the need to provide a specialized tool including one of the gear members may be obviated. In addition to recognizing the significant benefits of such an arrangement, an appropriate and practical structure for the gear assembly must be devised, such as the various embodiments of the invention disclosed in the present application. Accordingly, the present invention as defined in Claim 1, and all of the claims appended thereto, are both novel and non-obvious over the disclosure of Pilja.

In addition to the foregoing remarks, the Applicant also respectfully denies that Pilja discloses a retaining member as recited in Claims 19 to 21. Specifically, the Examiner alleges that the nut (7) threadably engaging the shaft (2) of Pilja corresponds with the retaining member of Claims 19 to 21 in the present application.

The function of the nut (7) in Pilja is to enable the prior art clamp to be tightened within suitable recesses or cavities formed within the objects to be clamped together. The function of

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the retaining member of the present invention, on the other hand, is to retain the clamp within the recesses or cavities during adjustment, and in particular prior to tightening of the clamp.

According to the embodiments of the present invention depicted in Figures 4a, 4b and 4c, the retaining member is the component 470 that enables the clamping assembly to be effectively secured within the cavities or recesses during adjustment. In its preferred form, the retaining member 470 includes first and second opposing wedge members 473, 474 as specifically recited in Claim 20. It is thus apparent that the retaining member of Claims 19 to 21 is neither disclosed nor suggested by Pilja.

In Paragraph 6 of the official action, the Examiner has rejected Claim 22 under 35 U.S.C. §103(a) as being unpatentable over Pilja. Specifically, the Examiner contends that the use of plastic to form the retaining member 470 would have been obvious to one of ordinary skill in the art.

The Applicant respectfully denies that the invention as defined in Claim 22 is obvious, in view of the dependence of this claim upon Claim 19, which is in turn dependent upon Claim 1. In accordance with the foregoing remarks relating to the rejections under 35 U.S.C. §102(e), the Applicant believes that Claim 1 is both novel and non-obvious, furthermore that the retaining member defined in Claim 19 is neither disclosed nor suggested by Pilja, and specifically that the retaining member does not correspond with the nut (7) of Pilja, as has been suggested by the Examiner. Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) because it clearly cannot be obvious to form the retaining member from plastic as specified in Claim 22, if the provision of the retaining member itself is not obvious. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a).

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

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Respectfully submitted,

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